

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 9, 2007

MATTHEW HARE v. CHRISTINE GRABLIS

Appeal from the Chancery Court for Rutherford County
No. 06-0133CV Robert E. Corlew, III, Chancellor

No. M2006-00715-COA-R3-CV - Filed on April 12, 2007

A mother filed a petition for habeas corpus challenging the father's custody of their child. The father had been awarded temporary custody pursuant to an order of the juvenile court of another county, as the latest in a series of orders emanating from dependency and neglect proceedings initiated in that court by the mother. Because the custody order was not void on its face, we affirm the trial court's denial of habeas corpus relief.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Christine Grablis, Murfreesboro, Tennessee, Pro Se.

Matthew Hare, appellee, not represented on appeal.

OPINION

This appeal arises from a judgment of the Chancery Court of Rutherford County, entered February 16, 2006, dismissing an action filed by Christine Grablis, acting *pro se*, that was titled "Application for Extraordinary Emergency Petition For Habeas Corpus ad Faciendum et Recipiendum, Change of Venue, Removal of Guardian ad Litem, Grant Exclusive Custody to Mother of Angelina Grablis, Supervised Visitation with Father, and Correct Errors of Juvenile Court." The petition apparently sought relief from a custody order (or change of custody order) previously entered by the Davidson County Juvenile Court. The petition requested, in part, that the court grant an emergency hearing and issue a writ of habeas corpus to have the parties' child immediately returned to the custody of her mother, Ms. Grablis, "due to her unconstitutional confinement." Among other requests for relief, the petition also asked the court to grant the mother sole custody of the child, with the father to have supervised visitation.

The trial court determined that an immediate writ of habeas corpus should not issue ex parte and set the mother's petition for a prompt hearing. That hearing was held February 6, 2006, and included testimony from Ms. Grablis as well as a number of exhibits to that testimony, in which she explained the basis of her petition, including what would be considered legal argument.¹ The relevant facts to be gleaned from that record are set out below.

The legal proceedings between these parties began in December of 1998 when the mother filed a petition in the Davidson County Circuit Court to establish paternity and for child support. Mr. Hare was determined to be the father of Angelina Grablis, who was born November 8, 1998, and ordered to pay child support. Mr. Hare requested and was granted visitation. Subsequently, in early 2003, Mr. Hare filed a petition for more visitation, which was heard in the Davidson County Circuit Court on February 6, 2003. That court entered an order granting modification of the prior custody arrangement, giving the father additional residential placement time, and adopting a new parenting plan. That was the last involvement of the Circuit Court.

In July of 2003, Ms. Grablis filed a petition seeking exclusive custody and suspension of the father's visitation in the Juvenile Court of Davidson County. In that petition, the mother alleged that the child was dependent or neglected and had been sexually abused by the father.

The mother's case was heard with the mother represented by counsel. A guardian ad litem participated. A number of witnesses provided testimony, including experts, investigators, and others. The court found there was not clear and convincing evidence the child had been sexually abused. However, the court found the child dependent and neglected. The court detailed the acrimonious, vitriolic, and "toxic" relationship between the parents and the effect of the parents' animosity on the child. The court ordered the parents to attend Partners in Parenting, parenting classes, and counseling as well as ordering counseling for the child. Because the father had been prevented from visiting with the child for nine months, the court ordered supervised therapeutic visitation and named a specific visitation supervisor with the understanding unsupervised visitation would recommence when appropriate. The court also advised the parties not to impede the child's relationship with the other parent or to thwart visitation. The mother was specifically warned that any attempt to thwart the child's visitation with the father would be considered in any future change of custody proceeding. The order was entered April 13, 2004. Although Ms. Grablis initially appealed that order, she dismissed that appeal before it was heard.

The father filed a motion for visitation which was heard October 28, 2004. Apparently, the parties reached an agreement as to that dispute. Before an order on that petition was issued, Mr. Hare filed a petition for change of custody on December 15, 2004, in which he asserted that Ms. Grablis had attempted to thwart his visitation. This petition was heard over two days with a number of witnesses. Both the mother and the father were represented by counsel. The court found there had been a material change of circumstances in that Ms. Grablis had continued to interfere with Mr.

¹ The trial court was exceptionally patient and unfailingly polite to the parties and allowed Ms. Grablis to present her position as fully as she wanted.

Hare's visitation and had failed to encourage a meaningful relationship between the child and her father, but instead had attempted to "sabotage" that relationship. The court ordered joint custody. While Ms. Grablis remained the primary residential parent, Mr. Hare was given extended visitation in the summer. The court gave other specific instructions and ordered that the guardian ad litem continue to be involved in the case. This order was entered May 27, 2005.

On October 28, 2005, the Juvenile Court of Davidson County entered an order ex parte granting temporary custody of the child to the father. The court found that delay for a hearing would likely result in harm to the child, that there was no less drastic adequate remedy than removing the child from the mother's custody, and that it was contrary to the child's best interest to stay in the mother's custody "because Ms. Grablis is a flight risk who has refused to allow the child to visit with the [father] and refuses to contact the guardian ad litem and disregards the orders of this Court." The order set a hearing for November 2, 2005. The order resulting from that hearing stated in pertinent part that the child would remain in her father's custody "due to Ms. Grablis' oral motion for a continuance of this matter."²

The transcript of that hearing clearly shows that Ms. Grablis asked for a continuance of the "whole matter," which included the temporary change of custody as well as a contempt petition. She wanted time to hire an attorney, although the court offered to appoint an attorney. The court explained to Ms. Grablis that a continuance would mean that the child would remain with her father pending a later hearing. Ms. Grablis stated she still wanted a continuance. The guardian ad litem recommended that the child remain in the father's custody. The court granted Ms. Grablis's continuance and ordered that the mother have visitation every other weekend and be allowed to have lunch with the child at school. The court explained to Ms. Grablis the need to get an attorney soon so the hearing could be set.

The next event in the protracted litigation was Ms. Grablis's filing of the petition for habeas corpus in another court in another county. The gist of that pleading and Ms. Grablis's testimony thereon was her objection to custody being temporarily changed to make the father the primary residential parent. She wanted the Chancery Court in Rutherford County to order the child returned to her custody, to take jurisdiction of the case, and in essence overrule the juvenile court's orders. She had many objections to previous unappealed actions by the Juvenile Court of Davidson County.

During Ms. Grablis's testimony, the trial court advised her several times that, in order to get relief under the habeas corpus petition, she would need to show that the father's custody of the child was illegal or the juvenile court's actions were unlawful. Ms. Grablis admitted that the juvenile court judge had continued the last custody hearing at her request, that she had hired attorneys who had agreed to a date for the hearing in March, and that she had missed two court dates on other motions in January.

² At the hearing on the habeas corpus petition in the proceeding now before us on appeal, Ms. Grablis confirmed that she requested a continuance at this November hearing.

After the hearing and after reviewing all the exhibits, which were filings and orders from prior court proceedings, the trial court entered an order denying Ms. Grablis's petition and dismissing the action. In that order the trial court found that Mr. Hare was not holding the child unlawfully. The court further stated, "While the Court recognizes that the petitioner had or has the right to appeal the decisions of the other Courts which previously have rendered decisions in this cause, there is no cause for this Court to assume jurisdiction while other Courts have assumed jurisdiction of matters involving the minor child of the parties." Ms. Grablis appealed.

The writ of habeas corpus lies to inquire into a restraint of liberty. Tenn. Code Ann. § 29-21-101. The writ is purely prerogative. *State ex rel. Brown v. Newell*, 216 Tenn. 284, 391 S.W.2d 667 (1963); *State ex rel. Jones v. West*, 139 Tenn. 522, 201 S.W. 743 (1918). Whether habeas corpus relief should be granted is a question of law to which reviewing courts apply a standard of *de novo* review without a presumption of correctness. *Hogan v. Mills*, 168 S.W.3d 753, 755 (Tenn. 2005).

In the case before us, the father had primary residential placement of the parties' child pursuant to an order of the Juvenile Court of Davidson County. Where the basis for the custody that is alleged to be an unlawful restraint of custody is a court order or judgment, relief will be granted under a habeas corpus petition only if the challenged judgment is void and not merely voidable. *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004); *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999).

The standard for determining whether a judgment is void is well settled: whether the court had general jurisdiction of the subject matter, whether the judgment was wholly outside the pleadings, and whether the court had jurisdiction of the parties. *Gentry v. Gentry*, 924 S.W.2d 678, 680-81 (Tenn. 1996). Absent *prima facie* voidness, an order is merely voidable or it is valid.

The order giving Mr. Hare temporary custody is not void on its face. The Juvenile Court of Davidson County had jurisdiction. Ms. Grablis originally initiated the dependency and neglect proceedings that resulted in the finding that the child was dependent and neglected and in the court's continuing jurisdiction over the matter. See Tenn Code Ann. § 37-1-103(a)(1) and (c).³ The order granting a temporary change of custody or primary residential placement was well within the relief requested by the father's petition. Accordingly, we affirm the trial court's denial of habeas corpus relief.

Further, a party who is dissatisfied with a judgment or believes it is incorrect must appeal that judgment. An appellate court may correct errors occurring in the trial court. However, habeas corpus may not be used as a substitute for or in lieu of an appeal. *State ex rel. Smith v. Bomar*, 212 Tenn. 149, 368 S.W.2d 748 (1963); *Richmond v. Barksdale*, 688 S.W.2d 86 (Tenn. Ct. App. 1984).

³Under Tenn. Code Ann. § 37-1-103(a)(1), the juvenile court has exclusive original jurisdiction of dependency and neglect proceedings. Under subsection (c) of that statute, once such a proceeding has been initiated, jurisdiction continues in the juvenile court "until the case has been dismissed, or until the custody determination is transferred." The transfers referred to are "at the sole discretion of the juvenile court and in accordance with § 37-1-112." Tenn. Code Ann. § 37-1-103(c). While Ms. Grablis has alleged facts that, if true, may support a transfer request under Tenn. Code Ann. § 37-1-112(a), she has not alleged that she has made such a request to the Davidson County Juvenile Court.

Additionally, the Chancery Court of Rutherford County is not the appropriate forum for appeal of orders of the Juvenile Court of Davidson County.

The judgment of the trial court is affirmed. Costs of this appeal are taxed to the appellant, Christine Grablis.

PATRICIA J. COTTRELL, JUDGE